United Nations A/C.6/52/SR.15

General Assembly
Fifty-second session

Official Records

Distr.: General
12 February 1998
English
Original: Spanish

Sixth Committee

Summary record of the 15th meeting
Held at Headquarters, New York, on Friday, 24 October 1997, at 10 a.m.

Chairman: Mr. Daniell (Vice Chairman) ..... (South Africa)

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97-82277 (E)

The meeting was called to order at 10.05 a.m.

Agenda item 150: Establishment of an international criminal court (*continued*) (A/AC.249/1997/L.5 and L.8/Rev.1)

1. **Ms. Eshmambetova** (Kyrgyzstan) said that she strongly supported the European Union's proposal to consider and adopt the rules of procedure of the diplomatic conference at the final session of the Preparatory Committee in March 1998. She also welcomed the establishment of a trust fund in accordance with General Assembly resolution 51/207 and the voluntary contributions already made to it, which would enable the least developed countries to participate in the diplomatic conference.

2. From the outset, her Government had advocated the establishment of an international criminal court with jurisdiction to try individuals who committed exceptionally serious crimes. The necessity of establishing such a body had been discussed for the past 50 years. The difficulties that had been experienced by the ad hoc criminal courts for Rwanda and the former Yugoslavia reinforced that necessity. Her delegation supported the proposal that the Preparatory Committee's remaining sessions should concentrate on reaching a consensus on issues where there was a divergence of views, namely, the definition of some crimes, the principle of complementarity, the trigger mechanism, the role of the Security Council and penalties.

3. So far, her delegation was in favour of the inherent jurisdiction of the court over three crimes: genocide, war crimes and crimes against humanity. However, its final position would depend upon reaching agreement on the definition of the term "aggression" and upon the inclusion in the statute of the international criminal court of crimes against United Nations and associated personnel and crimes involving the illicit traffic in narcotic drugs and psychotropic substances. The definition of the term "aggression", based on the German proposal, made it possible to include that international crime as an act punishable under the statute. However, it was the Security Council, the body responsible for maintaining peace and security in accordance with the Charter of the United Nations, that determined the existence of an act of aggression. Her delegation supported the concept of an independent court under minimum influence of the Council and shared the view that the relationship between the court and national courts should be complementary. However, the court should prosecute those who committed such crimes when national systems did not function or had failed to take adequate measures.

4. Her Government was ready, if necessary, to amend its position in that regard for the sake of achieving general agreement among Member States that would lead to the establishment of an efficient international criminal court.

5. **Mr. Fulci** (Italy) said that on the occasion of the fifty-second anniversary of the United Nations, the President of Italy had sent a message to the Secretary-General in which he had made special reference to the question of the establishment of an international criminal court. The message had noted that Italy had been proud to have contributed in the past year to the launching of the great battle for civility and law, especially for the abolition of the death penalty and the establishment of an international criminal court with a mandate to prosecute and punish acts of genocide, war crimes and crimes against humanity, wherever and by whomever they were committed.

6. Italy was ready to host in Rome the diplomatic conference to adopt the statute of the new court. That was the best testimony to his country's full and unreserved commitment to the establishment of the court and to the organization of the diplomatic conference in Rome.

7. **Mr. Filippi Balestra** (San Marino) said that San Marino would never stop reiterating the importance of respect for internationally agreed principles. The establishment of a criminal court with international jurisdiction and the power to prosecute offenders all over the world was an extremely ambitious task. The court's usefulness was undeniable; there was no doubt that countries would accept its jurisdiction and would overcome internal obstacles for the common interest of all mankind.

8. He welcomed the fact that a generous fund had been established to allow least developed countries to participate in the work of the Preparatory Committee and the diplomatic conference.

9. **Mr. Rocca** (Observer for the Holy See) said that during the week's debate, reference had been made to outstanding issues with regard to the statute. In his view, those were issues were about to be resolved. They included complementarity, a better definition of the crimes to be covered, the trigger mechanism, the function and independence of the prosecutor, the independence of the international criminal court itself and its relationship to the United Nations. Logical, viable and possible solutions existed to all those problems. Indeed, substantive principles and various procedural aspects had already been defined and, in keeping with the proposal by Argentina and Brazil, it had been agreed to keep details to a minimum. In that connection, he recalled the Chinese Government's observation that it was not the time to invent new crimes.

10. One of the most important features of the debate had been the sense of purpose shown by delegations. When the International Law Commission had first submitted its draft statute to the Sixth Committee in 1994, there had been confusion, doubt, scepticism and even cynicism. Now, all that had vanished. A willingness and desire to elaborate a consolidated text had been noted in the roughly 90 statements made during the week.

11. To date, the establishment of an international criminal court had perhaps been impossible; now it was very feasible for the Sixth Committee and the Preparatory Committee to establish a court that was efficient, effective and viable.

12. **Mr. Lavoyer** (International Committee of the Red Cross) said that he wished to reiterate a number of points which he considered essential for the establishment of an efficient and fair system of international criminal justice. It was important to set up mechanisms to combat impunity for those responsible for violations of the laws. Justice must be rendered for the sake of the victims and a series of measures must also be taken to put an end to such violations. The law must not only exist, it must also be enforced. In cases in which trial procedures in national criminal justice systems were not available or were ineffective, an international criminal court would have a vital role to play. The establishment of an efficient, widely accepted court offering maximum guarantees of fair trial, free of any political pressure and designed to complement national justice systems would send a clear message to both the perpetrators of serious international crimes and their victims that immunity from prosecution would no longer be tolerated.

13. As part of its mandate to promote respect for international humanitarian law and to enhance its implementation, the International Committee of the Red Cross (ICRC) provided technical assistance to States in passing laws that were necessary for the investigation and prosecution of suspected war criminals, as required by the Geneva Conventions.

14. The advisory service on international humanitarian law of ICRC had a few weeks previously organized a meeting of experts to discuss problems of the suppression of crime at the national level and would hold a similar meeting of experts from common-law States in 1998. The aim of those meetings was to draw up guidelines for the drafting of legislation to punish violations of humanitarian law.

15. He wished to emphasize three points which he regarded as essential for the creation of a court empowered to take adequate and effective action to put an end to impunity. Firstly, the international criminal court must have jurisdiction over war crimes committed in international and non-international armed conflicts alike. Secondly, the court should have inherent jurisdiction over the crimes of genocide, crimes against humanity and war crimes. In order for the court to be an effective complement to national courts (since it would exercise its jurisdiction only in the event that States had failed to act), it should not be impeded by obstacles, such as the requirement of State consent. Under the principle of universal jurisdiction, any State already had the right to either exercise jurisdiction or hand over suspects, without having to secure the agreement of other States. To require State consent for a case to be submitted to the court would be a step backwards from existing law. Thirdly, in order to ensure respect for the basic principle of law that a court must be impartial and independent, prosecutions should not be subordinated to a prerogative conferred on the Security Council to prevent or delay prosecutions when it was dealing with a situation under Chapter VII of the Charter. The prosecutor should therefore be empowered to initiate investigations and institute proceedings ex officio.

16. ICRC hoped that the near future would be marked by firm political will on the part of States to bring about the establishment of an independent and efficient international criminal court, which would lend credibility to the desire of the international community to eliminate international crimes. The objective was clear: the atrocities must cease and those responsible for them must be held accountable.

Agenda item 155: Amendment to Article 13 of the Statute of the United Nations Administrative Tribunal (A/52/142 and Add.1)

17. **Mr. Grainger** (United Kingdom) said that his delegation was mindful of the need to review and update the statute of the United Nations Administrative Tribunal. The note by the Secretary-General of 17 September 1997 provided, firstly, for the jurisdiction of the Tribunal to be extended to the staff of the Registry of the International Court of Justice, an extension that was entirely appropriate now that the Court was no longer in a position to render advisory opinions on judgements handed down by the Tribunal. The second change proposed, in relation to cases of alleged non-observance of the Regulations of the United Nations Joint Staff Pension Fund, was also necessary in order for the statute to be brought into line with earlier decisions of the General Assembly.

18. Finally, he concurred with the recommendation that the competence of the Tribunal could also be extended, with the approval of the General Assembly, to any other international organization or entity established by a treaty and participating in the common system of conditions of

service, upon the terms set out in a special agreement between the organization or entity concerned and the Secretary-General.

19. While it fully supported the proposed amendments to the statute, it noted that other provisions could also benefit from review in order to help the Tribunal to better discharge its functions. One example was the lack of any mention in the statute of the need for its members to have appropriate legal qualifications. The amendments proposed should be adopted by resolution at the current session of the General Assembly. The resolution should also point to the desirability of reviewing the provisions of the statute at an early date and recommend that the item be included in the provisional agenda of the fifty-third session.

20. **Mr. Yahaya** (Malaysia) said that the deletion of article 11 of the statute of the United Nations Administrative Tribunal, pursuant to General Assembly resolution 50/54 of 11 December 1995, was a further step towards the establishment of a just and effective system of dispute settlement which offered a wide range of recourses to staff of the United Nations Secretariat, ensured due process and protected their rights. Malaysia supported the amendments to the statute of the Tribunal to give effect to the amendment to article 11 of the Staff Regulations for the Registry of the International Court of Justice, under which the Tribunal would be competent to hear appeals by the staff of the Court's Registry, since it would help to improve the existing appeal system of that body.

21. Malaysia would also like to see a change in the statute of the United Nations Administrative Tribunal to grant the Tribunal competence in Joint Staff Pension Fund cases, as approved by the General Assembly in its resolution 955 (X) of 3 November 1955 and with reference to the text of the amendment presented by the Secretary-General in paragraph 9 (i) and (ii) of his report (A/52/142/Add.1). In view of the interest shown by some international organizations and entities, such as the International Seabed Authority, in an arrangement that could extend the competence of the United Nations Administrative Tribunal, Malaysia supported the Secretary-General's proposal to amend article 13 of the Tribunal's statute by including a new paragraph providing that the competence of the Tribunal could be extended, with the approval of the General Assembly, to international organizations and entities participating in the common system of conditions of service.

22. Finally, Malaysia felt that there was a need to review or update some of the provisions of the statute of the Tribunal to bring them into line with current realities.

23. **Mr. Loras** (France) said that he fully supported the Secretary-General's proposal to amend article 13 of the statute of the United Nations Administrative Tribunal and also agreed with the proposal which the United Kingdom had just made that the Tribunal's statute should require members of the Tribunal to have the appropriate legal qualifications to discharge their functions, since that would strengthen the technical capacity of the Tribunal.

The meeting rose at 10.50 a.m.